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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,067	12/15/2003	Kenji Nakamura	KODA50A.001C1	9006
20995 7590 12/27/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER KAM, CHIH MIN	
			ART UNIT	PAPER NUMBER
			1656	
			NOTIFICATION DATE	DELIVERY MODE
			12/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

## Office Action Summary

Application No.

10/736,067

Applicant(s)

NAKAMURA ET AL.

Examiner

Chih-Min Kam

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-14, 16, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-14, 16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/665,848.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/7/04</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the species of (i)-(viii) on page 4 of the response to restriction requirement and amendment filed October 9, 2007 is acknowledged. In the amendment, claims 1, 4 and 16 have been amended, claims 6-10, 15 and 17-19 have been cancelled, and a new claim 21 has been added. Therefore, claims 1-5, 11-14, 16 and 20-21 are examined.

### ***Informalities***

The disclosure is objected to because of the following informalities:

2. The specification recites the protein components of the hydrolysate is rich in amino acids such as glycine, aspartic acid, glutamic acid and arginine as shown in Table 1 (paragraph [0038]). However, it is Table 2, not Table 1 having this description. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5, 11-14, 16 and 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 1-5, 11-14, 16 and 20-21 are indefinite because of the use of terms "a candidate" and "wrinkles on the skills". The terms cited renders the claim indefinite, it is not clear what the

term “a candidate” refers to since the specification does not define it. It is also not clear what the term “wrinkles on the skills” means. Claims 2-5, 11-14, 16 and 20-21 are included in the rejection because they are dependent on a rejected claim and do not correct the deficiency of the claim from which they depend.

5. Claim 2 recites the limitation "the sponge protein" in line 1. There is insufficient antecedent basis for this limitation in the claim since claim 1 only recites “sponge protein hydrolysate”, not "sponge protein". Claims 3, 13-14 and 20 are included in the rejection because they are dependent on a rejected claim and do not correct the deficiency of the claim from which they depend.

6. Claim 5 is indefinite because of the use of the term “wherein the sponge protein hydrolysate has a growth stimulating effect on cells derived from mammals”. The terms cited renders the claim indefinite, it is not clear how the sponge protein hydrolysate can have a growth stimulating effect on cells derived from mammals since claim 1 only recites the sponge protein hydrolysate has a human cell growth stimulating activity on human fibroblasts, not on cells derived from mammals. It is also not clear what are the cells “derived from” mammals, and how different these cells from the parent cell in the mammals. Use the term “obtained from” is suggested.

7. Claims 13 and 14 are indefinite because of the use of the term “wherein the solution has a growth stimulating effect on human epidermal keratinocytes”. The terms cited renders the claim indefinite, it is not clear how the sponge protein hydrolysate solution can have a growth stimulating effect on human epidermal keratinocytes since claim 1 only recites the sponge protein hydrolysate solution has a human cell growth stimulating activity on human fibroblasts,

not on human epidermal keratinocytes. Claim 14 is included in the rejection because it is dependent on a rejected claim and does not correct the deficiency of the claim from which it depends.

***Conclusion***

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Bragdon can be reached at 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D.  
Primary Patent Examiner

 CHIH-MIN KAM  
PRIMARY EXAMINER

CMK

December 19, 2007